1949. K File No. B. Local Boards 49

Legal Dept-
B. BRANCH

Subject:— A Bill to amend the Bombay Local Boards Act 1923

L.A. Bill No. VIII of 1949

Bom Act X of 1949.

945

File No. B. Local Boards 149

Gen. 194 a.

709-B

Office of the R.L.A.

Statement of the Case.

In Second Appeals Nos.973,974 and 975 of 1942 and other Revision Applications, the High Court of Bombay has held that the District Local Board, Ratnagiri, has no right to maintain a suit under section 72 of the Bombay Local Boards Act, 1923, for personal decree for recovery of the octroi duty, but that the only remedy open is to seize the goods in respect of which the octroi is leviable. As on account of the geographical position of the Ratnagiri District the method of seizure of goods is found to be unsuitable, the Health and Local Government Department has, at the request of the district Local Board, proposed the following amendments in the Bombay Local Boards Act with a view to enabling the District Local Board to file suits for recovery of octroi:-

(1) In sertion in section 3 of the definition of the expression "octroi" as "a cess on the entry of goods into a local board area for consumption, use or sale therein";

(2) Insertion of the words "or by seizure and sale" after the words "distress and sale" in section 72; and

(3) deletion of the words "an octroi or " in section 104(1)(b) and inserting the words "including an octroi" after the words "tax" in that clause.

2. In this connection attention is invited to the opinions of the Advocate General and that of Mr.G.N.Joshi obtained by the District Local Board (copies at pages 27-34 ante) wherein amendment of the Bombay Local Boards Act had been suggested.

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3.The question whether the Bombay Local Boards Act, 1923, can be amended in the manner proposed is not quite free from doubt. In the opening paragraphs of his judgment Stone C.J. laid particular emphasis upon the special characteristics of octroi which in his opinion differentiated its nature from a tax; see second pagagraph of the judgement at p.15. In the concluding portion of the judgment, the learned Chief Justice made the following observations:

> "I desire to add that in deciding this case, we have not taken into consideration an argument that was adumberated in this Court viz., that as section 143 of the government of India Act, 1935 only protects taxes lawfully levied before the 1st of April 1937 under a law ~~xxxxxxx~~ in force on the 1st of January 1935, the whole effect of the 1938 amendments are inoperative because that Act did not come into operation until the 22nd December, 1938 by which date it was too late for the Provincial Government to legislate otherwise than by virtue of List II and III of the Seventh Schedule to the Government of India Act, 1935, in which there is no mention of an octroi, though item 49 of List II is in respect of cessesson the entry of goods into a local area for consumption, use or sale therein, we express no opinion on this question."

Presumably, therefore, the learned Chief Justice was not prepared to endorse the view that octroi is a cess on the entry of goods into a local area for consumption, use or sale therein. In his opinion at pp.31-34 Mr. G.N.Joshi also raises the doubt as to whether from the very nature of octroi a personal liability can be imposed on the importer of goods. In short, the doubt has been raised that, by reason of its special characteristics, octroi cannot be treated as a cess on goods of the nature contemplated by entry 49 in the Provincial Legislative List, and that even if it could be so regarded as a cess, having regard to its essential characteristics it will not be feasible to impose a personal liability.

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JPB.

4. It has been repeatedly laid down by Courts when considering questionsx on constitutional issues that, in deciding the question as to the ~~xxxxxxxx~~competency of a Legislatureto impose a particular tax, Courts will look into the real nature i.e. the pith and substance of the tax and ignore the label it bears. Even the learned Chief Justic seems to concede that octroi is tax. By a cess we generally understand axn assessement of tax. Unless, therfore, it be held that by its inherent characteristics an octroi cannot be described as a cess, there is no reason why it should not be relatable to entry 49 in the Provincill Legislative List. The definition of an octroi as a cess would not in that view be ultra vires. Under section 3(12) of the Bombay Muncipla Boroughs Act, 1925, an octroi has been defined to include a terminal tax. The whole question, therefore, turns upon the inquiry whether there is any distinction in law between a cess and a tax. The whole question, therfore, turns upon the inquiry whether there is any distinction in law between a cess and a tax, and whether by its inherent characteristics, an octroi cannot be regarded as a cess. The viewx I am inclined to take is that, despite its origin and its special characteristics, octroi is nevertheless a tax or a cess, and that it would be competent to the Provincial Government on that assumption to difine it as a cess without any serious risk of that definition being challenged as a colourable pretence inteded somehow or other to bring octroi within the scope of entry 49.

Although the ~~xxxxx~~ question whether the Provincial Legislature specifically considered in the past, it has been can make a law for imposing octroi has not been impliedly taken for granted in a number of opinions given by the R.L.A? that such a tax can be imposed by the Province (vide R.L.A's opinions Nos.5166, da ed 13/10/1937; 326P dated 10/10/1938; and 11282 dated 23/12/1940).

5. If this view be correct, there should ordinarily be -

no.....

no limitation on the power of the Provincial Government we the such a tax a personal liability, and with a view to enforcing such liability, to insert suitable provisions in the enactment. It has been emphasised by the Privy Council in serveral cases that the powers of the Provincial Legislature within their own domain are xplenary and no restrictions can be imposed on such power by thexoretical or imaginary conceptions. There is no doubt that in the present case the Bombay Local Boards Act can be amended in the manner suggested and in the light of the principles enunciated by the Federal Court and the Privy Council in sexveral cases, the amendments will be completely within the ambit of the power confesred by the Constitution Act on the Provincial Legislature.

6. As the question is not free from doubt, the Advocate General is requested to give his opinion.

Id/- P.M.L.
7/4/48
Remembrancer of Legal Affairs.

U.H. to Advocate General, No.3772, dated the 19th April 1948.

PE.4/6/56.
copies.

No.39 of 1948.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 9th September 1948.

Subject:- Amendments of the Local Boards' Act in the matter of the recovery of Octroi by the District Local Board, Ratnagiri.

OPINION.

The judgment referred to in the statement of the case is reported in 47 Bom.L.R. at page 889 and the concluding portion of the judgment of the Learned Chief Justice is at page 905. In that paragraph there is a mere passing reference without expressing any opinion, to the argument advanced in the appeal that there is no mention of "Octroi" in List II of the Seventh Schedule to the Government of India Act, 1935, though item 49 of the List is in respect of cesses on the entry of goods into a local area for consumption, use or sale therein. There is no decision on the point. In my opinion, Octroi is the same thing as a cess as provided in Item No.49 in List II.

I agree that the Bombay Local Boards Act can be amended in the manner suggested.

Sd/- M.P.Amin.
Advocate General.

JPS.4/6/56
4 copies.

Legal Department.

As the question involved was important, the Advocate General was consulted. A copy of the opinion of the Advocate General along with a copy of the Statement ofthe Case is sent herwith. In view of the opinion given by the Advocate General, there will be no objection to make the payment of octroi a personal liability and to enforce such liability by way of a suit. Section 72 of the Bombay Local Boards Act, 1923, may be amended on the lines of section 203 of the Bombay Municipal Boroughs Act, 1925 The requisite draft Bill to amend the Bombay Local Boards Act, 1923, is sent herewith.

2. The subject-matter of the Bill falls under entry 13 in the Provincial Legislative List in the Seventh Schedule to the Government of India Act, 1935. As the Bill does not relate to any matter enumerated in the Concurrent Legislative List, it is not necessary to reserve the same for the consideration of the Governor-General with reference to section 108(2) of the said Act.

3. The Bill does not require any sanction or recommendation under the Government of India Act, 1935.

Id/-J.R.D.
28/10

Additional Secretary to G[illegible]

J.R. to H. & L.G.D.No.10112 dated 28th October 1948.

Pz.4/6/[illegible]
copies.

Legal Department.

The draft Bill to amend the Bombay Local Boards Act, 1923, sent to H. & L.G.D. with this Department u.r.No.10113, dated the 28th October 1948, has been further revised in the light of the discussion which the R.L.A. and the Additional Secretary had with the president of the District Local Board, Ratnagiri. A copy of the revised draft Bill is sent herewith. A new section 106A is proposed to be added to the Bombay Local Boards Act, 1923, which would enable the officer of the District Local Board to board vessels carrying goods leviable with Octroi.

2. If the proposed provisions is enacted into law it will be necessary for the District Local Board, Ratnagiri, to take steps to amend its Octroi Rules under section 100 of the Bombay Local Boards Act, 1923.

Id/- J.R.D.
27/11

Additional Secretary to Government.

U.R. to H. & L.G.D., No.III72, dated the
27th November 1948.

JPE.4/6/56.
4copies

Legal Department.

The requisite draft Bill is sent herewith.

2. It does not appear that it will be feasible to add new section after section 98 of the Bombay Local Board Act, 1923, as proposed by the H. and L.G.D. as Chapter VII deals with "taxation" while the proposed section is about grant-in-aid. A new Chapter VIII A may therefore be added after section 118 of the Act. Clause 3 accordingly provides for this.

3. The view taken in para. 2 of the H. and L.G.D. office note that no amendment in section 75 is necessary is correct.

4. The subject-matter of the Bill falls under entry 13 in the Provincial Legislative List in the Seventh Schedule to the Government of India Act, 1935. As the Bill does not relate to any matter enumerated in the Concurrent Legislative List, it will not be necessary to reserve the same for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

5. The Bill does not need any sanction but would require recommendation under section 82 of the Government of India Act, 1935.

Id/- J.R.D.
4/12

Additional Secretary to Government.

U.R. to H. and L.G.D., No.11548, dated the

6th December 1948.

JP2.4/6/56
4 copies.

No.3340
Legal Department,
Bombay Castle, 28th March 1949.

From
J.R.Dhurandhar, Esquire, O.B.E.,
Additional Secretary to the Government of Bombay,
Legal Department.

To
The Private Secretary to the Governor of Bombay.

Subject:- The Bombay Local Boards (Amendment) Bill, 1949.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for the assent of His Excellency the Governor the authentic copy of the Bombay Local Boards (Amendment) Bill, 1949, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 19th February 1949 and on the 7th March 1949, respectively.

2. The subject matter of the Bill falls under entries 13 & 49 in List II in the Seventh Schedule to the Government of India Act, 1935. As the Bill does not relate to any matter enumerated in the Concurrent Legislative List, it is not necessary to reserve the same for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

3.The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement .

4.I also forward herewith one copy of each of items

1.	Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	Nos.1,2 and 4 and two copies of item No. 3 of the papers noted in the margin.
2.	Bill as read for the thrid time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council	
3.	Bill as read for the third time and passed by the Bombay Legislative Council..	
4.	Extracts from the proceedings of the Bombay Legislative Assmbly dated the 19th February 1949 and of the Bombay Legislative Council dated the 7th March 1949.	

The Bill was not referred to a Select Committee.

Yours faithfully,

Id/- J.R.D. 26/3
Additional Secretary to the Govt. of Bombay, Legal Department.

Through The Secretary to the Govt. of Bombay, Health & Local Govt., Department.

JPR.4/6/52 Ap

No. 1209.

FROM

L.M.Nadkarni, Esquire, I.C.S.

PRIVATE SECRETARY TO THE GOVERNOR OF BOMBAY

To,

The Additional Secretary to the Government of Bombay,
Legal Department.

GOVERNMENT HOUSE.

BOMBAY. April 12th, 1949

Subject:- The Bombay Local Boards
(Amendment)Bill, 1949.

Sir,

With reference to your letter No.3340, dated March 23, 1949, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the authentic copy of the Bombay Local Boards (Amendment) Bill, 1949.

Yours faithfully,

Id/- L.M.N.

Private Secretary to the Governor of Bombay.

JPS.4/6/56.
4 copies.

Bills.

A Bill to amend the Bombay Local Boards Act, 1923.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 799

Bombay Castle, 22nd January 1949.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 22nd January 1949, as Bill No. VIII of 1949.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hidustani(in Urdu and Devnagari scripts) and the transaltions should be published in the Bombay Government Gazettee, on the 29th January 1949.

3. The dates of the various publications should be reported to the Bombay Legislature Department.

By order of the Governor of Bombay,

Sd/- S.L.Chaudhari,
Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay (with the Bill and the Statement of Objects and Reasons and with a request that 230 Gazette copies of the Bill and the S.O.R. may be forwarded to the Bombay Legislature Department for distribution to the members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department and 20 copies for the use of Health and Local Government Department),

The Health and Local Government Department,)
The Oriental Translator to Government,)with a
The Bombay Legislature Department,)copy of
The Director of Publicity, Bombay,)the Bill
The Enquiry Officer for the Secretariat, Bombay)and S.O.R.

*With five extra copies of the Bill.

JPS.4/6/56
4 copies.

ACTS.

Publication of the Bombay Local Boards (Amendment) Act, 1949.

GOVERNMENT OF BOMBAY,
Legal Department.
Resolution No. 4237

Bombay Castle, 19th April 1949.

Letter to thePrivate Secretary to the Governor, No. 3340, dated the 28th March 1949.

Letter from the Private Secretary to the Governor, No.1209, dated the 12th April 1949.-

"with reference to your letter No.3340, dated March 28, 1949, I am directed to return herwith, with His Excellency the Governor's assent signified thereon, the authentic copy of the Bombay Local Boards (Amendment) Bill, 1949."

RESOLUTION:- The law should be published as Bombay Act No.X of 1949, in the Bombay Government Gazette dated the 19th April 1949.

2. The Act should be translted into Marathi, Gujarati, Kannada and Hidustani (in Urdu and Devnagari scripts) and the transalations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Health and Local Governmen Department.

By order of the Governor of B'bay

Sd/- S.L.CHAUDHARI,
Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department).
The Health and Local Govt. Department)
The Oriental Translaterto Government,)
The Bombay Legislature Department,)with a
The Director of Publicity,Bombay,)copy of
The Enquiry Officer for the Secretariat,)the Act.
Bombay 8)

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*With five extra copies of the Act.

Sd/ 15/6 JPE.4/6/56.4c.

Registered No. B-1

The

Bombay Government Gazette

PUBLISHED BY AUTHORITY

SATURDAY, 22ND JANUARY 1949.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

[To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. VIII OF 1949.

A Bill to amend the Bombay Local Boards Act, 1923.

Bom. VI of 1923.

WHEREAS it is expedient to amend the Bombay Local Boards Act, 1923, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Local Boards (Amendment) Act, 1949.

Bom. VI of 1923.

Amendment of section 3 of Bom. VI of 1923.

2. In section 3 of the Bombay Local Boards Act, 1923 (hereinafter called the said Act), after clause (*ff*) the following new clause shall be inserted, namely :—

"(*gg*) 'octroi' means a tax by way of cess on the entry of goods into a district for consumption, use or sale therein ; ".

Amendment of section 9 of Bom. VI of 1923.

3. In section 9 of the said Act, to sub-section (*1*) the following shall be added, namely :—

"or

(*f*) has directly or indirectly by himself or his partner any share or interest in any transaction of loan of money advanced to or borrowed from any officer or servant of the local board.".

Amendment of section 19 of Bom. VI of 1923.

4. In sub-section (3) of section 19 of the said Act, to clause (*b*), the following proviso shall be added, namely :—

"Provided further that after such computation if an equality of votes is found to exist between any

candidates and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in favour of such candidate, or candidates, as the case may be, selected by lot drawn in the presence of the Judge in such manner as he may determine.".

Amendment of section 26 of Bom. VI of 1923.

5. In section 26 of the said Act—

(*a*) to sub-section (*1*) the following shall be added, namely :—

"and a president or vice-president so removed shall not be eligible for re-election or appointment during the remainder of the term of office of the local board." ;

(*b*) in sub-section (*2*)—

(*i*) after the words "vacancy shall" the words, brackets and figure "subject to the provisions of sub-section (*1*)" shall be inserted, and

(*ii*) for the words "some other member" the words "a member" shall be substituted.

Amendment of section 30 of Bom. VI of 1923.

6. To sub-section (*1*) of section 30 of the said Act, the following shall be added, namely :—

"Provided that where an application is made by a member to the local board for leave to absent himself under clause (*c*) and the Board fails to inform the applicant of its decision on the application within a period of three months from the date of the application, the leave applied for shall be deemed to have been granted by the Board.".

Amendment of section 72 of Bom. VI of 1923.

7. In section 72 of the said Act, for the words "In lieu of proceeding by distress and sale, or in case of failure to realise by so proceeding" the words "In lieu of any process of recovery allowed by or under this Act or in case of failure to realise by such process" shall be substituted.

Insertion of new section 80B in Bom. VI of 1923.

District Local Boards to spend 75 per cent. of grant of land revenue in talukas.

8. After section 80A of the said Act, the following new section shall be inserted, namely :—

"80B. Every district local board shall, out of the grant of land revenue made by the Provincial Government under section 118A, spend for the benefit of each taluka at least seventy-five per cent. of the amount of the grant of such revenue realised in the taluka.".

Amendment of section 104 of Bom. VI of 1923.

9. In section 104 of the said Act, in clause (*b*) of sub-section (*1*), the words "an octroi or" shall be deleted and after the words "any tax", the brackets and words "(including an octroi)" shall be inserted.

10. After section 106 of the said Act, the following new section shall be inserted, namely :— Insertion new section 106A in Bom. VI of 1923.

"106A. Where an officer of a district local board has reasons to suspect that any goods on which an octroi is leviable are on board a vessel and such vessel has entered any river, stream, creek or an arm of the sea, the limits of which shall be specified by the Provincial Government as being within the district for the purposes of this section, such officer may board the vessel and may take steps for the recovery of octroi due in the manner provided by this Act.". Octroi on goods in vessels in river, creek, etc.

11. For the marginal note to section 116 of the said Act, the following shall be substituted, namely :— Amendment of marginal note to section 116 of Bom. VI of 1923.

"Power to seize animals, goods or vehicles on non-payment of octroi or toll.".

12. In section 116A of the said Act— Amendment of section 116A of Bom. VI of 1923.

(*i*) for the word and figures "Chapter VIII" the words "this chapter", and

(*ii*) for the words "under the said chapter" the words "thereunder",

shall be substituted.

13. After section 118 of the said Act, the following shall be inserted, namely :— Insertion of new Chapter VIIIA in Bom. VI of 1923.

"CHAPTER VIIIA.

FINANCIAL ASSISTANCE TO DISTRICT LOCAL BOARDS.

118A. The Provincial Government shall make every year a grant to every district local board equivalent in amount to fifteen per cent. of the ordinary land revenue including non-agricultural assessment realised during the previous revenue year from lands within the limits of the district excluding lands within municipal boroughs, municipal districts or villages within the meaning of the Bombay Village Panchayats Act, 1933.". Grant of 15 per cent. of land revenue to district local boards.

Bom. VI of 1933.

14. For section 136 of the said Act, the following shall be substituted, namely :— Substitution of new section for section 136 of Bom. VI of 1923.

"136. (*1*) No suit shall be commenced against any local board, or against any officer or servant of a local board, or any person acting under the orders of a local board, for anything done, or purporting to have been done, in pursuance of this Act, without giving to such Limitation of suits, etc.

local board, officer, servant, or person one month's previous notice in writing of the intended suit and of the cause thereof, nor after three months from the date of the act complained of.

(2) In the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.".

STATEMENT OF OBJECTS AND REASONS.

IT IS necessary to make the following amendments in the Bombay Local Boards Act, 1923. The provisions of the Bill are explained below :—

Clauses 2, 7 and 9 to 12.—The District Local Board, Ratnagiri, levies octroi. But on account of the peculiar geographical situation of the district it is not possible for it to collect the duty adequately as there have been many evasions. The High Court of Bombay has held that the District Local Board, Ratnagiri, has no right to maintain a suit under section 72 of the Act for personal decree for recovery of octroi duty but that the only remedy open to the Board is to seize the goods in respect of which the octroi is leviable. The Board is accordingly unable to recover octroi duty by filing suits. Octroi is the main source of income of the Board. On account of the geographical position of the Ratnagiri District the method of seizure of goods is found to be unsuitable unless the Board employs staff on a scale which will make the levy unprofitable. It has also no jurisdiction over the waters of the creeks and no seizure of goods would be legally feasible so long as the goods are on board the vessels. It is, therefore, proposed to make the payment of octroi a personal liability and to make it enforceable in law by way of a suit. It is also proposed to make provision in the Act to enable an officer of the Board in certain circumstances to board any vessel carrying goods leviable with octroi and to take steps for the recovery of octroi dues in the manner provided.

2. *Clauses 8 and 13.*—As a measure of financial assistance to District Local Boards, Government has sanctioned with effect from the current financial year to each Board a grant-in-aid equal to 15 per cent. of the ordinary land revenue including non-agricultural assessment realised during the previous revenue year in the district excluding the area subject to the jurisdiction of the municipalities and village panchayats. The grant is subject to the condition that the Boards spend in each taluka at least 75 per cent. of the amount realised from that taluka. In order to give a greater sense of security to the Boards as regards the continuance of the grant in future, it is considered desirable that a statutory provision should be made for the purpose.

3. *Clause 14.*—Under the provisions of the present sub-section (*2*) of section 136 of the Act, no suit, prosecution or other legal proceedings can be commenced against a member or servant of a District Local Board unless the previous notice as laid down in that section is given, nor after 3 months from the date of the act complained of. In the matter of starting prosecutions, the position, therefore, is that if the statutory requirements are not complied with, no prosecution can lie and the offenders escape punishment which is against

the ordinary principle of criminal justice. It is, therefore, proposed to rectify the position and restore the provisions of this section as they were before its amendment in 1935.

4. *Clauses 3 to 6.*—Provision is also proposed to be made (1) for disqualifying a member of a Local Board who participates in any transaction of loan with any officer or servant of the Board, (2) for the insertion of a proviso to section 19(3) enabling a Judge, in the case of an election dispute owing to an equality of votes, to determine it by the addition of one vote by lot drawn in his presence, (3) for not allowing a President or Vice-President removed from office for misconduct, or neglect of or incapacity to perform his duty, to be eligible for re-election or appointment during the remainder of the term of office of the Board, and (4) for presuming the grant of leave of absence applied for by a member of a Board unless it is expressly refused within three months.

(Signed) G. D. VARTAK.

Dated the 18th January 1949.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Additional Secretary to the Government
of Bombay, Legal Department.

Bombay, dated the 21st January 1949.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

The following Act of the Bombay Legislature having been assented to by the Governor on the 12th April 1949 is hereby published for general information.

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. X OF 1949.

(First published, after having received the assent of the Governor, in the "Bombay Government Gazette" on the 19th April 1949.)

An Act to amend the Bombay Local Boards Act, 1923.

WHEREAS it is expedient to amend the Bombay Local Boards Act, 1923, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Bom. VI of 1923.

1. This Act may be called the Bombay Local Boards (Amendment) Act, 1949. Short title.

Bom. VI of 1923.

2. In section 3 of the Bombay Local Boards Act, 1923 (hereinafter called the said Act), after clause (*ff*) the following new clause shall be inserted, namely :— Amendment of section 3 of Bom. VI of 1923.

"(*gg*) 'octroi' means a tax by way of cess on the entry of goods into a district for consumption, use or sale therein;

Amendment of section 9 of Bom. VI of 1923.

3. In section 9 of the said Act, to sub-section (*1*) the following shall be added, namely :—

"or

(*f*) has directly or indirectly by himself or his partner any share or interest in any transaction of loan of money advanced to or borrowed from any officer or servant of the local board.".

Amendment of section 19 of Bom. VI of 1923.

4. In sub-section (*3*) of section 19 of the said Act, to clause (*b*), the following proviso shall be added, namely :—

"Provided further that after such computation if an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in favour of such candidate, or candidates, as the case may be, selected by lot drawn in the presence of the Judge in such manner as he may determine.".

Amendment of section 26 of Bom. VI of 1923.

5. In section 26 of the said Act—

(*a*) to sub-section (*1*) the following shall be added, namely :—

"and a president or vice-president so removed shall not be eligible for re-election or appointment during the remainder of the term of office of the local board.";

(*b*) in sub-section (*2*)—

(*i*) after the words "vacancy shall" the words, brackets and figure "subject to the provisions of sub-section (*1*)" shall be inserted, and

(*ii*) for the words "some other member" the words "a member" shall be substituted.

Amendment of section 30 of Bom. VI of 1923.

6. To sub-section (*1*) of section 30 of the said Act, the following shall be added, namely :—

"Provided that where an application is made by a member to the local board for leave to absent himself under clause (*c*) and the Board fails to inform the applicant of its decision on the application within a period of three months from the date of the application, the leave applied for shall be deemed to have been granted by the Board.".

Amendment of section 72 of Bom. VI of 1923.

7. In section 72 of the said Act, for the words "In lieu of proceeding by distress and sale, or in case of failure to realise by so proceeding" the words "In lieu of any process of recovery allowed by or under this Act or in case of failure to realise by such process" shall be substituted.

8. After section 80A of the said Act, the following new section shall be inserted, namely :— Insertion of new section 80B in Bom. VI of 1923.

"80B. Every district local board shall, out of the grant of land revenue made by the Provincial Government under section 118A, spend for the benefit of each taluka at least seventy-five per cent. of the amount of the grant of such revenue realised in the taluka.". District Local Boards to spend 75 per cent. of grant of land revenue in talukas.

9. In section 104 of the said Act, in clause (*b*) of sub-section (*1*), the words "an octroi or" shall be deleted and after the words "any tax", the brackets and words "(including an octroi)" shall be inserted. Amendment of section 104 of Bom. VI of 1923.

10. After section 106 of the said Act, the following new section shall be inserted, namely :— Insertion of new section 106A in Bom. VI of 1923.

"106A. Where an officer of a district local board has reasons to suspect that any goods on which an octroi is leviable are on board a vessel and such vessel has entered any river, stream, creek or an arm of the sea, the limits of which shall be specified by the Provincial Government as being within the district for the purposes of this section, such officer may board the vessel and may take steps for the recovery of octroi due in the manner provided by this Act.". Octroi on goods in vessels in river, creek, etc.

11. For the marginal note to section 116 of the said Act, the following shall be substituted, namely :— Amendment of marginal note to section 116 of Bom. VI of 1923.

"Power to seize animals, goods or vehicles on non-payment of octroi or toll.".

12. In section 116A of the said Act— Amendment of section 116A of Bom. VI of 1923.

(*i*) for the word and figures "Chapter VIII" the words "this chapter", and

(*ii*) for the words "under the said chapter" the word "thereunder",

shall be substituted.

13. After section 118 of the said Act, the following shall be inserted, namely :— Insertion of new Chapter VIIIA in Bom. VI of 1923.

"CHAPTER VIIIA.

FINANCIAL ASSISTANCE TO DISTRICT LOCAL BOARDS.

118A. The Provincial Government shall make every year a grant to every district local board equivalent in amount to fifteen per cent. of the ordinary land revenue including non-agricultural assessment realised during the previous revenue year from lands within the limits of the district excluding lands within municipal boroughs, municipal districts or villages within the meaning of the Bombay Village Panchayats Act, 1933.". Grant of 15 per cent. of land revenue to district local boards.

Bom. VI of 1933.

14. For section 136 of the said Act, the following shall be substituted, namely :— Substitution of new section for section 136 of Bom. VI of 1923.

"136. (*1*) No suit shall be commenced against any local board, or against any officer or servant of a local board, or any person acting under the orders of a local board, for anything done, or purporting to have been done, in pursuance of this Act, without giving to such local board, officer, servant, or person one month's previous notice in writing of the intended suit and of the cause thereof, nor after three months from the date of the act complained of. Limitation of suits, etc.

(*2*) In the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.".

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